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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Respondent*.

On Appeal From the Supreme Court of South Carolina

JURISDICTIONAL STATEMENT

GERARD HARITOS
714 Southern Building
Washington, D. C.
Counsel for Appellant

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JURISDICTIONAL STATEMENT

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, contends the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgments of the Supreme Court of South Carolina, 28 U.S.C. 1257(2).

OPINION BELOW

The opinion of the Supreme Court of South Carolina, adopts verbatim the order of the trial court. App. A, *infra*, pp. 1a-25a. Order of trial court, App. A, *infra*, p. 3a.

JURISDICTION

The Supreme Court of South Carolina on July 7, 1970 affirmed the order of the Court of Common Pleas for Richland County, which upheld the action of the South Carolina Tricentennial Commission, to take appellant's property under the claim of eminent domain, and this appeal dated July 23, 1970 was from that judgment.

Petitions for rehearing were duly filed and denied on July 22, 1970. 28 U.S.C. 1257 (2).

The Clerk of the South Carolina Supreme Court on August 1, 1970, transmitted the certified record of that Court in this case to this Court.

Appellant filed a second Motion to Stay the remittitur with the Supreme Court of South Carolina, dated Aug. 10, 1970, and for an Order to Stay the enforcement of the judgment; pending the perfection and disposition of this appeal, which likewise was denied by that Court on Aug. 28, 1970. Appellants filed with this Court on Sept. 9, 1970 a Motion to Stay the enforcement and execution, which was denied Sept. 24, 1970.

QUESTION PRESENTED

Whether South Carolina may condemn or take private property without evidence of, public use or necessity, for supposedly public parking, or diverted uses, in connection with its Tricentennial Celebration, using Federal funds in payment therefor, in violation of Appellants' guaranteed constitutional rights; and on which property a Federal Savings & Loan Association holds a mortgage.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution provides pertinent parts as follows:

Amendment V.

". . . Nor be deprived of, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Article III. Section 1.

"The Judicial Power of the United States, shall be vested in one Supreme Court," . . .

Section 2.

"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, • • • ; to controversies to which the United States shall be a party; and between a State, or the citizens thereof, . . ."

STATEMENT

This is a Federal and State condemnation civil proceeding, in that it involves United States Treasury funds in payment for land and several hundred modern furnished rental apartments in four separate 3 story brick buildings, with new modern equipped restaurant, all situate on the premises and in use, the earnings and income, providing the appellant with her livelihood. Cert. Tr. record.

This action arose for purpose of solely and exclusively, condemning the appellant's property and buildings, with a special class statutory provision by the South Carolina General Assembly, designated Act. No. 1141 of the Acts and Joint Resolutions of 1966, approved on May 4, 1966, Act No. 925 of the Acts and Joint Resolutions of 1956, as amended, 1969—No. 293

to establish the South Carolina Tricentennial Commission, respondent herein, but said act did not grant or delegate, the powers of eminent domain, inherent to the State and its sovereign powers to condemn and acquire private property without consent of the owner, appellant herein, for temporary use, nonpublic uses and without reasonable necessity, as required and in noncompliance with congressional action where federal funds are applied for and used. Certified Record Nos. 3 and 4 Defendant's Exhibit K, Open Space Contract and Supreme Court opinion, 7/7/70. App. C, pp. 32a-36a, incl.

The Supreme Court of the United States has jurisdiction of this appeal, because substantial direct federal constitutional questions are involved, including the payments with United States Treasury funds, channeled and provided by Housing and Urban Act of 1965, as amended, but appropriated by action of the Congress. There is a diversity of citizenship and forceful taking of private property, without due process of law and without just and adequate compensation, to replace said properties and loss of earnings. Moreover, the Secretary of Housing and Urban Development by letter has advised the appellant that the use of the Treasury funds in payment of the condemnation properties, that there must not be any violation of Federal procedures, and that all federal statutes and regulations must absolutely be complied with and accompanying said letter was a copy of the said Regulations. No. OS-5, which have not been complied with, though an investigation was ordered by HUD officials, but no report. Cert. Record. No. 3. Defendant's Exhibit K and Regulations. Appendix B, pp. 26a-29a.

The South Carolina Tricentennial Commission celebration is for the duration of one year, 1970, which

is coming to a close, and the use of the appellant's properties after condemnation is a temporary use for one year now a few months, as a parking lot, because pursuant to the Joint Resolutions creating the Commission it will terminate by operation of law in 1972, and therefore the said Commission cannot retain title to the Appellant's property after 1972, but can use and dispose of appellant's property when the Tricentennial Celebration concludes in 1970 as it may see fit, private commercial purposes or otherwise, all in violation and in noncompliance with the use of funds from the United States Department of Housing and Urban Development, under Title VII of the Housing Act of 1961, as amended, in conflict with public policy and the HUD contract grant with the respondent which expired 6 months after May 29, 1969 since title to the property was not acquired. Cert. Transcript of Record. Defendant's Exhibit K, Open Space Contract. Since the Commission expires in 1972, the Contract was void and illegal 6 months after May 29, 1969. The United States Government. Grant Sec. 11, Project. App. C, pp. 32a to 36a incl.

REASONS FOR JURISDICTION

Constitutional Provisions Involved

United States Constitution provides pertinent parts as follows:

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"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * * ; to controversies to which the United States shall be a party; and between a State, or the citizens thereof, ..."

The condemnation proceedings in this action below were invalid because the appellant was denied due process of law as guaranteed by the Constitution of the United States, and the forceful taking of her private properties, without just and reasonable compensation, by payment of a token of Three hundred and twenty five thousands ($325,000.00) Dollars, with money supplied in noncompliance by HUD from United States Treasury funds, whereas the investments over a period of 25 years by the appellant in said properties and equipment, possessed a fair market value of Two and one half million Dollars. These federal constitutional questions with the disbursement and use of United States Treasury funds pursuant to contract with HUD and the respondent, are directly involved and irrevocably interlocked in this appeal to this Court. App. C, 32a to 36a, incl.

The contract between Hud and respondent, with the use of federal funds from Washington, presents a novel and unique question heretofore, not passed on or decided by this Court, under the same facts and circumstances involved here, and should be settled by this Court, especially since there has been no complete and fair trial by due process of law, no determinations of the issues, nor personal service on the appellant by the trial Courts. The Order of the Trial Court

was printed as the opinion of the Supreme Court of South Carolina. Official Certified Record Nos. 3 & 4. Copy of opinion, App. A, pp. 1a to 25a incl., Tr. Certified Record.

Appellant contends, and respondent admits, that United States Treasury funds are used through HUD in payment of the condemnation properties. The appellant has a personal and official letter direct from The Secretary of Housing and Urban Development and transmitted therewith a copy of the Regulations which have not been complied with in the use of these funds, advising the appellant, that in the receipt and use of these federal funds from Washington, in payment for her condemnation properties, that there must not be any violation of the Federal procedures, and that all federal statutes and Regulations must absolutely be complied with. Sec. 401 et Seq., Housing and Urban Act of 1965, as amended.—Proceedings Published No. OS-5. Defendant's Exhibit K. No. 3 of Certified Record lodged in this Court, on appeals. App. B, pp. 26a-29a. Appellant further contends, it is a matter of fact and record, that the aforestated has not been complied with, though there was mention in said letter of an investigation by HUD.

The landmark of due process of law, is the opportunity to be heard, and the right to a trial of the federal and constitutional issues involved in the proper Court of rightful jurisdiction, but appellant has been denied this right under the federal laws and constitutional by the forceful taking of her properties with a token payment with federal funds by State Courts in condemnation, and this is another reason why the Supreme Court of the United States should take jurisdiction of this appeal.

Appellant, respectfully submits, that she is entitled to jurisdiction herein requested and to the protection of the Fifth amendment, and by this Court granting a decision appellant contends would certainly settle the Federal Constitutional condemnation question presented, and would afford a guideline in future federal and state condemnation proceedings, specifically where HUD is involved in the use of United States Treasury funds, as is illustrated here with its contract with respondent, invalid and in noncompliance, with HUD regulations. See App. C, pp. 32a to 36a incl.

This appeal will prove that the taking of the properties by State condemnation, the acquisition to be paid for with federal funds, for temporary public parking or otherwise, is a use not authorized by the United States Housing and Urban Development Act of 1965, as amended, and since the Tricentennial Commission, respondent herein, will expire by operation of law, and the Celebration will cease within three months hereafter, viz, 1970, certainly there is no necessity, for temporary parking uses or otherwise. Certified record. No. 3. Defendant's Exhibit K, Open Space land Contract. Regulation. No. OS-5. App. C, pp. 32a-36a. Moreover, these valuable properties, consisting of the land and four separate 3 story brick buildings, with all the modern equipment therein, no doubt would be converted to other uses and purposes, not authorized by law and in violation of the Housing Act, supra, and regulations. In addition, this is a violation of due process and equal protection of the Laws and outside of the scope of uses authorized by Congress and the Housing and Urban Act of 1965, as amended. App. B, pp. 26a to 29a incl.

The respondent and the United States Department of Housing and Development, specifically fails to comply with Section 11—The Project (b) the Public Body, respondent, agrees to retain said land, appellant's properties, for permanent open-space purposes, and the open-space use or uses of said land, * * *, because the respondent Commission expires by operation of law in 1972, and has no authority to contract to retain title to said properties beyond 1972, and this alone is in violation of the grant and uses, for open-space purposes and the acquisition with federal funds herein. The contract and Grant, proves that the respondent Commission is temporary in intent and purpose, and does not qualify or comply to acquire appellant's property under eminent domain proceedings for permanent public purposes. App. B, pp. 26a to 29a; App. C, pp. 32a to 36a, incl.

Regulation No. OS-5, HUD, supra, Reprinted 6/69, provides: The 90-day notice required by Item 3 of the statement shall be a written notice and shall be given to an owner-occupant as well as a tenant. If the property is acquired through eminent domain proceedings, "*the 90-day notice shall not be given prior to the date on which the Public Body acquires title to, or the right to possession of, the property.* Underscoring supplied. The Order of the Trial Court of Common Pleas for Richland County, of August 27, 1970 conveys title to the Public Body, respondent, herein on said date effective 30 days thereafter to take possession of the appellant's various properties. This failure alone is invalid and in noncompliance with the contract and regulations between HUD and the respondent, and it is respectfully submitted should be

another valid reason, for the Supreme Court of the United States, to grant jurisdiction. App. C, pp. 32a to 36a incl.. Regulation No. OS-5, HUD, *supra*, further provides:

> "When developed land is proposed for acquisition, it is expected that structures on the land will be small, and deteriorated or dilapidated."

The aforestated requirement is far from the case of record of appellant's valuable properties situated in the heart of down-town Columbia, South Carolina, The Capitol of the State, and valued at more than Two Million Dollars, with the 4 brick mansions, the land and the extensive equipment therein, and being forcefully condemned and taken with a token and nominal payment with HUD funds.

It is respectfully submitted in this Prayer for Jurisdiction, if respondent receives under invalid and unconstitutional statutes appellant's properties, then appellant will be caused irreparable injury and suffer substantial damages by permanent loss of her properties, apartments, equipment of great value, restaurant, earnings for her support and to pay debts and other commitments she has obligated, improvements and investments added for the past 25 years, a total loss of more than 3 million dollars, gone forever which cannot be assessed and recovered by law, not to mention loss of earnings therefrom, never to be replaced by this illegal condemnation, and without due process and just compensation, directly involved and interlocked with federal issues and funds.

Appellant prays that without this jurisdiction, she now has no reasonable or valid means, whereby her personal and substantial property rights and invest-

ment of 25 years may be preserved, and the federal and constitutional issues heard on the merits of her case. Where the United States Constitution is interpreted by this Honorable Court, relative to the exercise of the claimed power by a State of eminent domain, pursuant to federal grants and use in payments of United States Treasury funds, then there are certain basic rules of law, that the Constitution of the United States must be considered and respected, as superior to the State, whose legislative and Court powers are limited, as here. Article III. Section 1 and Section 2.

Appellant in answer to the respondent, The South Carolina Tricentennial Commission, designated as a temporary Body pursuant to and created by Section 3 of Joint Resolution 925 of the Acts and Joint Resolutions of South Carolina of 1956, as amended by Joint Resolution No. 1141 of 1966 and as further amended by Joint Resolution of 1969 bearing ratification No. 293, does not comply as a Public Body to retain Appellant's land and valuable costly buildings, for permanent open space purposes, since The BODY, viz, South Carolina Tricentennial Commission is temporary by its own creative law enactment, the celebration expires, December 1970, and the Body by legislative act aforesaid is terminated by law in 1972, and the U.S. Treasury funds grant is null and void by the Contract with HUD. See copy of contract in Appendix C, pp. 32a to 36a, incl.

Appellant respectfully submits, that every authority, statute and Court decision cited by the respondent and included in the trial Order and South Carolina Supreme Court decision, on appeal here by the appellant, concerns and relates to law relied on in South

Carolina Highway condemnation road and construction cases, city, municipal, state and state supported colleges, and those condemnation that fall in that category, without issue and payments of U.S. Treasury money in noncompliance with HUD regulations and contract with respondent. Appellant's valuable lands and building are being taken, pursuant to Special Class legislation, exclusive of other parties, properties, political subdivisions, partisanship, discriminatory, legislation enacted and directed personally against Annie Mary Timmons, appellant, and to the physical ejection and confiscation of her properties, by use and payment nominally with U.S. Treasury money, in violation of HUD's Contract and regulations, and without due process and just and reasonable compensation for a temporary state purpose and other diverted uses, pursuant to respondent's own special class legislation. Respondent cites not one single case in point and in the lower state court opinions in point and applicable to the facts of record here on appeal.

CONCLUSION

For the above reasons jurisdiction should be granted.

Respectfully submitted,

GERARD HARTZOG
714 Southern Building
Washington, D. C.
Counsel for the Appellant.

Washington, D. C.

October 7, 1970